

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Friends of Patrick Murphy and Brian Foucart in his official capacity as treasurer MUR 7067
Patrick E. Murphy
Floridians for a Strong Middle Class and Jennifer May in her official capacity as treasurer
Thomas P. Murphy, Jr.
Coastal Construction Group of South Florida, Inc.

I. INTRODUCTION

The Complaint alleges that U.S. Representative Patrick Murphy ("Rep. Murphy"), a candidate for the U.S. Senate in Florida in 2016,1 unlawfully coordinated with Floridians for a Strong Middle Class ("FSMC"), an independent-expenditure only committee ("IEOPC"), in violation of the Federal Election Campaign Act of 1971, as amended (the "Act").

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

FSMC registered with the Commission as an IEOPC in April 2015.2 The Complaint alleges that FSMC was formed to support Rep. Murphy's senatorial campaign and that FSMC "has been primarily funded by [Rep.] Murphy's own company and a family member with whom he has financial ties. . . ."3 The Complaint points to a \$200,000 contribution to FSMC on December 18, 2015, from Thomas Murphy, Jr. ("Thomas Murphy"), Rep. Murphy's father, and a

1 Rep. Murphy filed his Statement of Candidacy on March 23, 2015.

2 FEC Form 1, Statement of Organization, Floridians for a Strong Middle Class (filed Apr. 29, 2015), available at http://docquery.fec.gov/pdf/051/15951233051/15951233051.pdf. In its statement, FSMC represented that it, "intends to make independent expenditures, and consistent with the U.S. Court of Appeals for the District of Columbia Circuit decision in SpeechNow v. FEC, it therefore intends to raise funds in unlimited amounts. This committee will not use those funds to make contributions, whether direct, in-kind, or via coordinated communications, to federal candidates or committees." Id.

3 Compl. at 1.

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1 the knowledge of Rep. Murphy or his Committee.¹⁰ Thomas Murphy further avers that he has
2 not otherwise had any involvement with FSMC “regarding any communications or ‘independent
3 expenditures’ that they have made or may or may not make in the future.”¹¹ Respondents also
4 state that, at the time they filed their responses, FSMC had not yet made any public
5 communications in support of Rep. Murphy.¹² A review of FSMC’s FEC filings supports this
6 assertion. After the responses were filed, FSMC made several independent expenditures in
7 support of Rep. Murphy’s candidacy and filed independent expenditure reports disclosing those
8 independent expenditures.¹³

9 B. Legal Analysis

10 The Act prohibits any person from making, and any candidate or committee from
11 knowingly accepting, contributions in excess of the limits stated in 52 U.S.C. § 30116.¹⁴ In
12 addition, IEOPCs are prohibited from making contributions to federal candidates,¹⁵ and
13 candidates and their authorized committees are prohibited from accepting “soft money”
14 contributions not subject to the limits and prohibitions of the Act.¹⁶

¹⁰ Murphy Resp., Decl. of Thomas Murphy, Jr. ¶¶ 5-6.

¹¹ *Id.* ¶ 4.

¹² FSMC Resp. at 2; Murphy Resp. at 3.

¹³ See Floridians for a Strong Middle Class Electronic Filings. See, e.g., 48 Hour Independent Expenditure Reports (Aug. 4, 2016 & Oct. 11, 2016).

¹⁴ 52 U.S.C. § 30116(a), (f).

¹⁵ See 52 U.S.C. § 30118(a) (prohibition on corporate contributions); 11 C.F.R. § 114.2(a) (same); Advisory Op. 2010-11 (Commonsense Ten).

¹⁶ See 52 U.S.C. § 30125(e)(1).

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1 For purposes of the Act, an expenditure is coordinated if it is made in cooperation,
2 consultation or concert with, or at the request or suggestion of, a candidate, a candidate's
3 authorized committee, or a political party committee.¹⁷ Any expenditure that is coordinated is an
4 in-kind contribution to the candidate or committee with which it is coordinated.¹⁸ An
5 expenditure for a communication is coordinated when the communication:

- 6 (1) Is paid for, in whole or in part, by a person other than that
7 candidate, authorized committee, or political party committee;
8 (2) Satisfies at least one of the content standards¹⁹ in paragraph
9 (c) of [§ 109.21]; and
10 (3) Satisfies at least one of the conduct standards²⁰ in paragraph
11 (d) of [§ 109.21].²¹

12 While the Complaint alleges coordination between the Committee and FSMC, it does not
13 identify any specific communications or other expenditures that were supposedly coordinated.
14 In fact, the information available in the record before the Commission indicates that FSMC had
15 not yet made any public communications when the Complaint was filed. While FSMC paid for

¹⁷ 11 C.F.R. § 109.20(a); *see also* 52 U.S.C. § 30116(a)(7)(B)(i).

¹⁸ *See* 52 U.S.C. § 30116(a)(7)(B)(i)-(ii); *see also* 11 C.F.R. §§ 109.20, 109.21(b).

¹⁹ The content standard is satisfied if the communication at issue meets at least one of the following content standards: (1) a communication that is an electioneering communication under 11 C.F.R. § 100.29; (2) a public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate's authorized committee; (3) a public communication that expressly advocates the election or defeat of a clearly identified candidate for federal office; (4) a public communication, in relevant part, that refers to a clearly identified House or Senate candidate, and is publicly distributed or disseminated in the clearly identified candidate's jurisdiction 90 days or fewer before the candidate's primary election; or (5) a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c)(1)-(5).

²⁰ The six types of conduct that satisfy the conduct standard are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee; and (6) republication. 11 C.F.R. § 109.21(d).

²¹ 11 C.F.R. § 109.21(a).

1 independent expenditures in support of Murphy after the Complaint was filed, the available
2 information regarding those expenditures does not evidence any violations of the Act.

3 The payments for FSMC's advertisements were disclosed by FSMC as independent
4 expenditures in support of Rep. Murphy, so they appear to satisfy the payment and content
5 prongs of the Commission's coordination test,²² but the factual record does not support a
6 conclusion that the conduct prong may have been satisfied.²³ The fact that Thomas Murphy and
7 Coastal Construction contributed to FSMC, and that Rep. Murphy has an ownership interest in
8 Coastal Construction, without more, does not appear to satisfy any of the conduct standards.²⁴
9 This conclusion is further supported by Thomas Murphy's declaration that Rep. Murphy and the
10 Committee were not involved in his decisions to contribute and that he has not otherwise had any
11 involvement with FSMC regarding any communications.²⁵

12 The Commission therefore finds no reason to believe that the Respondents violated the
13 Act or Commission regulations as a result of the activities described in the Complaint.

²² See 52 U.S.C. § 30101(17) ("independent expenditure" defined as an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate and not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized committee, or their agents); 11 C.F.R. § 109.21(c)(3) (a communication will satisfy the content standard if it expressly advocates for the election or defeat of a clearly identified candidate for Federal office).

²³ See 11 C.F.R. § 109.21(d).

²⁴ See *id.*, F&LA at 5-9, MUR 6668 (Chen) (finding no reason to believe where the brother of a federal candidate provided \$765,000 of \$1,115,000 received by an IEOPC that supported the candidate.)

²⁵ Murphy Resp., Decl. of Thomas Murphy, Jr. ¶¶ 3-6.